

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of the
Cable Television Consumer
Protection and Competition
Act of 1992

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MM Docket No. 92-263

Consumer Protection and
Customer Service

REPLY COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("Time Warner") respectfully submits its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION

The NCTA standards are already in place in Time Warner Cable systems. The comments in the proceeding demonstrate that many cable operators throughout the industry have implemented the standards.¹ Moreover, the NCTA standards address the most

¹ See, e.g., Comments of Time Warner at 2, 4; Tele-Communications, Inc. ("TCI") Comments at 2; Continental Cablevision, Inc. ("Continental") Comments at 16; Comcast Corporation, Cox Communications, Inc., Jones Intercable, Inc. ("Comcast et al.") Comments at 4, note 3; Viacom International, Inc., Providence Journal Company, Multivision Cable TV Corp., Cablevision Industries, Inc. ("Viacom et al.") Joint Comments at 1, note 2.

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important areas of customer service, as reflected by the fact that the elements of Section 632(b)(1)-(3) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") track the elements of the NCTA standards. The NCTA standards are well-known, time-proven standards which the industry has adjusted to, at significant cost, over the past two years. For these reasons, the Commission should adopt the NCTA standards as the federal standards under Section 632.

Although some Commenters apparently support different standards,² they offer no persuasive rationale for believing that such standards would improve customer service. Rather, Time Warner believes, imposing a new set of standards will simply increase costs without resulting in measurable increases in actual consumer satisfaction.

While Time Warner supports the NCTA standards, however, it would not oppose administrative definitional

² See, e.g., National Association of Telecommunications Officers and Advisors ("NATOA"), National League of Cities, United States Conference of Mayors, and the National Association of Counties ("NATOA, et al.") Comments at 20-21; City of Dallas Comments at 4-7; West Michigan Communities Comments at 14-15; Attorneys General of Pennsylvania, Massachusetts, New York, Ohio and Texas ("Attorneys General") Comments at 2 (stricter standards necessary); Greater Metro Cable Consortium Comments at 2; Metropolitan Area Communications Commission Comments at 2-3.

clarifications to the Standards in order to clarify terms the Commission believes are ambiguous. As offered previously,³ Time Warner is willing to work with the Commission to develop any such clarifications.

It is critical, however, that the Commission recognize that the plain language of Section 632(b), provides that a cable operator may fulfill its customer service obligations through compliance with the federal standards. Thus franchise authorities may not unilaterally impose more stringent standards than the Commission's. This interpretation of Section 632(b) not only is required by the principles of statutory construction, but also is sensible as a matter of policy. Consumers will not benefit from a situation in which each franchising authority has the ability to impose conflicting and costly standards upon cable operators. Thus, to maximize economic efficiencies, and to ensure a proper reading of Section 632 which most benefits consumer welfare, franchise authorities may impose stricter standards in only two circumstances:

1) where the franchise authority and the cable operator agree to stricter standards pursuant to Section 632(c)(2); and

2) where a state or local law of general application imposes stricter standards.

³ See Time Warner Comments at 8.

II. TIME WARNER'S RESPONSE TO SPECIFIC ARGUMENTS RAISED BY COMMENTERS

A. The Commission Should Reject Customer Service Proposals That Are Offered in a Way that Denies Interested Parties the Ability to Review and Comment on the Proposals

Franchise authorities, as they have done in the past,⁴ complain that the NCTA standards "are lacking in two key respects: they are neither stringent nor specific enough...and they do not address a number of issues that should be addressed."⁵ NATOA et al. provide a skeletal notion of proposed alternative customer service standards, while reserving the right to refine them in the reply stage.⁶ Time Warner submits that this type of practice is patently unfair. Cable operators and other commenters must have the ability to comment on any proposed rules, especially considering that NATOA et al. suggest that these rules become a mandatory national standard.

⁴ During Congressional hearings, while state and local government witnesses welcomed the NCTA standards, they also generally complained of their lack of specificity. See Time Warner Comments at note 7.

⁵ NATOA, et al. Comments at 20-21. In addition, the Chief Counsel for Advocacy of the United States Small Business Administration ("USSBA") proposes that the Commission launch a Notice of Inquiry to address customer service issues outside the Section 632(b) minimums. See USSBA Comments at 3, note 3. In our view, Section 632(b) covers all necessary topics for national standards. Thus the Commission should reject USSBA's proposal.

⁶ See NATOA et al. Comments at 24, note 12.

B. It Would Be Inappropriate for the Commission to Restrict the Definition of Small Cable Systems to Independently Owned Systems

Regarding the concerns of smaller systems that the NCTA standards are too costly and burdensome to comply with,⁷ Time Warner reiterates that smaller systems should be exempt from costly measurement of compliance requirements. In Time Warner's experience, a limited exemption or waiver is beneficial for smaller systems. Time Warner recognizes that all customers are entitled to a proper level of customer service. This limited exemption would not operate to reduce overall customer service, but only to reduce costly measurement of compliance for small systems.

However, Time Warner does not support the position of some Commenters who wish to define smaller systems as those which are independently owned.⁸ To the extent that small systems, for valid reasons having to do with cost, are permitted to avoid certain measurement requirements, there is no reason to distinguish independent systems from MSO systems. Small systems within an MSO have the same cost considerations as small independent cable systems. If the Commission were to adopt such a distinction, it would, in effect, be supporting

⁷ See, e.g., Coalition of Small System Operators Comments at 3; Consortium of Small Cable System Operators Comments at 4-5; Cf. USSBA Comments at 5-7 (tiers of service standards are necessary to accommodate smaller firms).

⁸ See, e.g., Consortium of Small Cable System Operators Comments at 4-5. But see Comcast et al. Comments at 4 (while the number of subscribers an operator serves may be relevant in determining the level of customer service, the size of the company is not).

the cross-subsidization of smaller systems by larger systems within an MSO. Time Warner opposes that approach and recommends instead a definition of small systems which concentrates on the numbers of subscribers in the franchise area, and omits language concerning the ownership organization of the cable operator.

C. The Commission Should Not Adopt Escalating Customer Service Standards

It is important to note that Commenters did reach a general consensus regarding the implementation of an escalating standard. Most, if not all, who commented on this issue do not support its use.⁹ Time Warner joins in this conclusion. Escalating standards merely introduce uncertainty into the standards process. The un-economic costs for these standards (for example, accounting for obsolescence) cannot match the benefits of certainty provided by a uniform, national standard.

D. Because it is Clear that the Federal Standards Constitute the Maximum Obligation With Which Cable Operators Must Adhere, The Commission Must Limit the Ability of Franchise Authorities to Exceed the Federal Standards

Several Commenters suggest that the Commission's federal standards are minimum standards which serve to satisfy a cable operator's customer service obligations so long as the franchising authority does not impose more stringent or

⁹ See, e.g., City of Dallas Comments at 4; NATOA, et al. Comments at 32; Viacom et al. Comments at 5; Municipal Franchising Authorities (MFA) Comments at 16-17.

different standards.¹⁰ Time Warner believes that the better view, as a matter of law and policy, is that Section 632(b), which requires the Commission to "establish standards by which cable operators may fulfill their customer service requirements,"¹¹ creates a ceiling which can only be exceeded in certain limited circumstances described below. The position of some Commenters that the federal standards are merely a minimum violates the principle of statutory construction that all sections of a statute should be interpreted to have meaning. Moreover, the imposition of literally thousands of different local standards would make it difficult, if not impossible, to maintain and improve customer service.

Therefore, because the federal standards serve as the maximum requirements, franchise authorities must be limited in their ability to adopt more stringent standards.¹² To truly achieve the objective of the Act, which is to promote consumer welfare -- not at the expense of the consumer's pocketbook -- the Commission must find that franchise authorities may exceed

¹⁰ See, e.g., Coalition of Small System Operators Comments at 8; Consortium of Small Cable System Operators Comments at 1; MGB Associates, Inc. Comments at 2; MFA Comments at 3-6; USSBA Comments at 3; Attorneys General Comments at 2; New York State Commission on Cable Television Comments at 3-6.

¹¹ See 47 U.S.C. § 552(b) (emphasis added).

¹² See Time Warner Comments at 11-13.

the Commission's standards only upon mutual agreement or as imposed by a consumer protection law of general applicability.¹³

Some Commenters argue that consumer protection laws, as authorized in Section 632(c)(1), include enactments aimed solely at cable companies which regulate only customer service requirements.¹⁴ In addition, these Commenters argue that Congress may not enact a law which limits the police powers of the State.¹⁵ This analysis of Section 632(c)(1) is flawed for several reasons. First, it is unjust for state and/or local governments to single out cable companies for harsh treatment, while similarly-situated industries remain unaffected. Second, to acknowledge the Commenters' argument once again renders Section 632(b) meaningless. Third, until the courts have determined that Section 632 constitutes a violation of the separation of powers clause, the Commission should construe this provision logically and provide Section 632(b) with meaning and effect.¹⁶

¹³ Other Commenters share Time Warner's view; See TCI Comments at 15; Continental Comments at 48-50; Cole, Raywid & Braverman Comments at 10-16; NCTA Comments at 21-27.

¹⁴ See West Michigan Communities Comments at 5-12; City of Kalamazoo, Michigan, Comments at 2-7.

¹⁵ See West Michigan Communities Comments at 7-8.

¹⁶ In addition, one of the main cases cited by these commenters is a United States District court oral hearing denying a temporary restraining order ("TRO"). and preliminary injunction. Cablevision of Michigan, Inc. v. City of Kalamazoo, Docket No. 4:90-CV-170 (Dec. 20, 1990). Time Warner questions the precedential value, if any, of this TRO hearing.

III. CONCLUSION

For these reasons, Time Warner respectfully recommends that the Commission adopt regulations to implement Section 8 of the Act consistent with the proposals contained herein and in its initial Comments.

Respectfully submitted,

Time Warner Entertainment
Company, L.P.

A handwritten signature in black ink, appearing to read "Michael H. Hammer". The signature is fluid and cursive, with a long horizontal stroke at the end.

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